No. 77-1801

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

ELMER GARY RITTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 21-33) is reported at 569 F. 2d 1331.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 1978. A petition for rehearing was denied on May 24, 1978 (Pet. App. 34). The petition for a writ of certiorari was filed on June 20, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the obstruction of justice statute, 18 U.S.C. 1503, encompasses the selling of grand jury transcripts by petitioner, a court reporter, to subjects of the grand jury investigation.

STATEMENT

Following a bench trial in the United States District Court for the Middle District of Louisiana, petitioner and co-defendant Herbert A. Howard were convicted of conspiracy to obstruct the due administration of justice, in violation of 18 U.S.C. 371 and 18 U.S.C. 1503, by offering to sell transcripts of secret grand jury testimony. Petitioner was sentenced to three years' imprisonment. The court of appeals affirmed the convictions in a comprehensive opinion upon which we rely (Pet. App. 21-33).

The facts developed at trial are undisputed. Petitioner was a certified court reporter employed to record testimony before the federal grand jury in Baton Rouge, Louisiana. In October 1976, co-defendant Howard, acting in concert with petitioner, contacted Jules and Roger LeBlanc through an intermediary and informed them that he had access to materials that would be of interest to them in view of the grand jury's investigation into their banking affairs. The LeBlancs notified the F.B.I. of this contact and agreed to assist in foiling the scheme. Petitioner and Howard thereafter met with the LeBlancs and agreed to sell them eight transcripts and a tape recording of secret grand jury testimony for $10,000. The LeBlancs also agreed to pay $1,000 a month, in advance, to Howard as petitioner's agent for future transcripts of testimony in connection with the same grand jury investigation. Immediately upon receiving $11,000 from the LeBlancs, petitioner and Howard were arrested (see Tr. 94-97).

ARGUMENT

The sole question presented is whether the obstruction of justice statute, 18 U.S.C. 1503, encompasses the selling of grand jury transcripts by a court reporter to subjects of

the grand jury investigation.[1] Specifically, petitioner argues that, under the principle of *ejusdem generis*, Section 1503 should be construed to reach only those persons who use threats, force, or similar means to obstruct the administration of justice and that the statute therefore was unconstitutionally vague as applied to him. To be sure, acts or threats of force that intimidate court officers, jurors, or witnesses or that affect the "due administration of justice" are proscribed by the statute. But the plain language of Section 1503 also punishes anyone who "*corruptly* * * * influences, obstructs, or impedes * * * the due administration of justice." The evidence at trial clearly showed that petitioner and Howard endeavored for pecuniary gain to sell secret grand jury materials to persons who were the subjects of a criminal investigation. Consequently, the court of appeals correctly held that petitioner's conduct constituted a conspiracy to obstruct justice.

Relying on *United States* v. *Metcalf*, 435 F. 2d 754, 757 (C.A. 9), petitioner suggests (Pet. 17) that, despite the clear statutory language, Section 1503's coverage should be limited to "intimidating actions." Such a narrow reading of the statute would be justified only if Congress had been concerned exclusively with "coercive" obstructions of justice. As the court of appeals noted (Pet. App. 30-31 and n. 8), however, the legislative history does not support that limitation. 18 U.S.C. 1503, together with 18 U.S.C. 401 (defining the power of federal courts to punish contempt), are derived from the Act of March 2, 1831, 4 Stat. 487, whose purpose was to proscribe various conduct committed in contempt of court. As presently codified, Section 401 covers contempts in the court's

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[1]Section 1503 is reprinted in both the petition (Pet. 3) and the court of appeals opinion (Pet. App. 25 n. 1).

presence, while Section 1503 deals with out-of-court obstructions. See *Nye* v. *United States*, 313 U.S. 33, 48-49. Thus, Section 1503 is designed to achieve the twin goals of protecting participants in judicial proceedings and preventing miscarriages of justice by corrupt methods. *Anderson* v. *United States*, 215 F. 2d 84, 88 (C.A. 6), certiorari denied *sub nom. Lewis* v. *United States*, 348 U.S. 888; *United States* v. *Metcalf*, *supra*, 435 F. 2d at 756.

Although there is language in *Metcalf* which suggests that "the manner in which the statute may be violated would ordinarily seem to be limited to intimidating actions," this statement was neither necessary to the resolution of that case[2] nor supported by any analysis. Both parts of Section 1503 refer to "[w]hoever corruptly, *or* by threats or force, or by any threatening letter or communication, endeavors to *influence*, intimidate, or impede * * *" the due administration of justice (emphasis added). The first part of Section 1503 is clearly aimed at situations where the protection of participants in court proceedings is in jeopardy; the second part of the statute is more broadly framed to protect the "due administration of justice." In other words, to restrict the reach of the "due administration" clause to instances where a court participant is threatened or forcibly intimidated would render the second part of the statute essentially meaningless. See *United States* v. *Alpers*, 338 U.S. 680, 682; *United States* v. *Walasek*, 527 F. 2d 676, 679 n. 11 (C.A. 3). It goes without saying that a "statute should be construed so that effect is given to *all* its provisions, so that *no* part will be inoperative or superfluous, void or

[2]The court in *Metcalf* (435 F. 2d at 557) held not only that there was a lack of evidence of coercion on the defendant's part, but also that the defendant's actions did not relate to a pending judicial proceeding, which is a requirement of Section 1503.

insignificant * * *" (emphasis added). Sutherland, *Statutory Construction* § 46.06 (4th ed. 1973).

Thus, as the court of appeals explained (Pet. App. 26-27; footnotes omitted):

> Whatever can be accomplished through intimidating or influencing a witness, juror, or court official is labeled by section 1503 as an obstruction of justice, for the reason that each of these actors has certain duties imposed by law, and the interference with his performance of these duties necessarily disrupts the processes of the criminal justice system. Crucial to an understanding of the instant case is the realization that this same interference can occur despite the absence of any personal contact with a juror, witness, or official. For example, persons violate section 1503 when they destroy evidence relevant to a judicial proceeding, which demonstrates that the statute is concerned not only with protecting witnesses, jurors, and court officials but also with preventing "miscarriage[s] of Justice." *Samples* v. *United States*, 121 F. 2d 263, 265 (5th Cir.), cert. denied, 314 U.S. 662, 62 S.Ct. 129, 86 L.Ed. 530 (1941). * * * Using threats to prevent a grand jury witness from testifying has the result of destroying evidence; so does the burning of transcripts of that testimony, and both acts obstruct the administration of justice. The use of threats against a witness falls under the specific language of section 1503, while the destruction of documents comes under the omnibus clause.

See also *United States* v. *Partin*, 552 F. 2d 621, 631 (C.A. 5), certiorari denied, 434 U.S. 903. So, too, it is well established that Section 1503 extends to obstructions of justice perpetrated through bribery, a form of non-coercive conduct. *United States* v. *DeAlesandro*, 361 F. 2d

694, 699 (C.A. 2), certiorari denied, 385 U.S. 842; *United States* v. *Medlin*, 353 F. 2d 789 (C.A. 6), certiorari denied, 384 U.S. 973; *United States* v. *Hoffa*, 349 F. 2d 20, 40 (C.A. 6), affirmed, 385 U.S. 293. See also *United States* v. *Walasek, supra*, 527 F. 2d at 679 n. 9.[3]

In sum, there is no sound reason for applying the principle of *ejusdem generis*—at least the application of that principle urged by petitioner[4]—to the statute involved here. *Ejusdem generis* serves only to "ascertain[] the correct meaning of words when there is uncertainty * * *" but "may not be used to defeat the obvious purpose of legislation." *United States* v. *Powell*, 423 U.S. 87, 91, quoting from *Gooch* v. *United States*, 297 U.S. 124, 128.

Finally, petitioner's contention that the reach of Section 1503's "due administration of justice" clause is impermissibly vague, as applied to his conduct, is equally unconvincing.[5] As the Court stated in *Jordan* v. *De*

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[3]Indeed, the continuing validity of the *Metcalf* dictum is open to question. See *United States* v. *Friedman*, 445 F. 2d 1076, 1078 (C.A. 9), certiorari denied *sub nom. Jacobs* v. *United States*, 404 U.S. 958 (affirming, albeit without discussion, the defendant's conviction for, *inter alia*, obstructing justice by obtaining and using unreleased grand jury transcripts).

[4]Petitioner refers (Pet. 13-14) to the elaboration of *ejusdem generis* principles in *Haili* v. *United States*, 260 F. 2d 744 (C.A. 9); *United States* v. *Essex*, 407 F. 2d 214 (C.A. 6); *United States* v. *Ryan*, 455 F. 2d 728 (C.A. 9); and *United States* v. *Knife*, 371 F. Supp. 1345 (D. S.D.). However, as the court of appeals' discussion shows (Pet. App. 26 n. 3), these cases are each distinguishable and may be read as holding only that the "due administration of justice" clause prohibits acts designed to bring about evils "similar" or "similar in nature" to those prohibited by the statute's specific language. Petitioner's conduct, in breaching the secrecy of the grand jury, tended to produce the same result in terms of obstructing justice as if he had bribed a grand juror for the same information, conduct that certainly would be within the scope of Section 1503.

[5]As the court below pointed out (Pet. App. 31 n. 9), since petitioner's vagueness challenge does not involve any First

George, 341 U.S. 223, 231-232, whenever statutory "language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices," the statute passes constitutional muster. Petitioner concedes that the unauthorized disclosure of grand jury proceedings is within the obvious intendment of the statute if violence or intimidation is used to obtain this end. No different result is required if the unauthorized disclosure of the same materials occurs by "corrupt" means, including sale by a person in breach of a known duty of secrecy. See Fed. R. Crim. P. 6(e). There can be no doubt that petitioner's attempted sale of grand jury transcripts to subjects of the investigation tended seriously to obstruct the accomplishment of the grand jury's important functions and to disrupt the orderly procedures of the criminal justice system. See *United States* v. *Procter & Gamble Co.*, 356 U.S. 677, 681-682 and n. 6; 1 Wright, *Federal Practice & Procedure* § 106, p. 171 (1969).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Amendment considerations it need only be examined in light of the facts of the case at hand. See *United States* v. *Powell, supra*, 423 U.S. at 92; *Rose* v. *Locke*, 423 U.S. 48, 50 n. 3; *Parker* v. *Levy*, 417 U.S. 733, 759.

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